Appendix 31

OFFICE Navy

STATION

No

Dated

Date

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Signed

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To be destroyed

(S U B J E C T.)

Ref.A.3-5822-25.

South Kanara Collector's Office,
Mangalore, dated 9th Decr.1931.

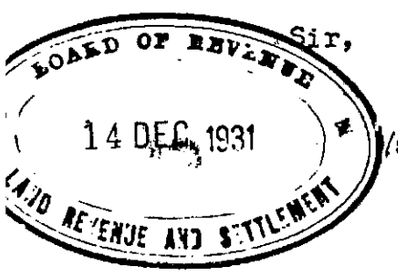
From

Khan Bahadur J. Hussain, Bar-at-law,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

R.P. 73



Sir,

Suits (South Kanara) - Mangalore Dt.Munsif's Court - O.S.242/25 (Dt.Court A.S.150/27) -Second appeal to High Court.

The suit in question, the defence of which was sanctioned by the Board in its Proceedings No. 20,70 Mis. L.R.&. Sett., dated 22-9-25, was dismissed with costs by the District Munsif, Mangalore on 11-12-1926, holding that the plaintiff did not prove his warg right over the plaint plot. On appeal the District Court allowed it and passed a decree against Government (defendant) for delivering possession of the plaint plot with mesne profits, damages and costs of the plaintiff.

2. The Government Pleader, Mangalore is of the opinion that this is a fit case for second appeal and recommends that one may be filed, not only because the Dt. Judge has taken a wrong view of the whole matter, but also because the Government have been made liable to pay to the plaintiff a very large sum of Rs. 655-12-3 as damages &c., as detailed in the enclosed statement. I agree with the Government Pleader and if the Board is of the same view, I request that the Government Pleade Madras may be instructed to file the 2nd appeal. Copies of the decrees and judgments in the Lower and Appellate Courts as detailed in the margin, together with a certified copy of th plan produced i the suit are enclosed.

1. Printed copies of the Dt.Court judgment in A.S. 150/1927. ... 5 copies.
2. - do - Dt.Munsif's Court judgment in O.S.242/25. ... 5 copies.
3. Certified copy of the Dt.Court decree in A.S.150/27. ... 1 copy.
4. Typed copies of - do - ... 2 copies.
5. Certified copy of the Dt.Munsif's court decree in O.S.242/25. ... 1 copy
6. Typed copies of -do- ... 2 copies.

3. The Court has allowed 3 months' time for Government to pay the decree amount. Pending disposal of the second appeal recommended to be filed, I request that the Government Pleader, Madras may be asked to file a petition for stay as regards the payment of the amount. Should, however, the Board decide on the immediate payment of the amount, I reques that an additional allotment of Rs. 600/- may be sanctioned for the extra expenditure in addition to the amounts already applied for.

4. I enclose a copy of the precis of the case, together with a draft Memorandum of appeal prepared by the Government Pleader, Mangalore. The judgment and decree in the appeal was passed by the District Judge on 21-9-31. Copies were applied for by the Government Pleader on 24-9-31. They were ready for delivery on 6-11-31 and were received by me on 11-11-31. The appeal time will expire on 1-2-1931.

For Collector.

10.12.31

Statement showing the particulars of the amount of costs etc., payable by Government to the plaintiff on or before 21-12-3: as per decree of the Dt. Judge, South Kanara in A.S.No.150/27.

	Particulars.		Amount. Rs. a. p.
I (a)	Mesne profits from the date of eviction (20-1-25) to the date of decree at Rs.10/- per annum.	...	66-10-8
(b)	Interest on - do - from 20-1-26 to 20-9-31 at 6% per annum.	...	11-6-5
(c)	Future mesne profits from the date of the decree to 20-12-31(3 months' period).	...	2-8-0
(d)	Future interest on item I(a) from the date of decree to 20-12-31(3 months' period).	...	1-0-0
II(a)	Damages for the trees cut and sold on eviction on 20-1-25.	...	80-0-0
(b)	Interest on - do - from 20-1-25 to 20-9-31, i.e., till the date of decree.	...	32-0-0
(c)	Future interest on item II (a) from 21-9-31 to 20-12-31 (3 months'period)	...	1-3-2
III.	Costs of the plaintiff in the Lower Court.	...	280-15-0
IV.	- do - - do - Dt. Court.	...	112-3-0
V.	Refund of costs recovered from plaintiff for costs of Government in the Lower Court.	...	67-14-0
	Total.	...	655-12-3

South Kanara Collector's Office,
Mangalore, dated 9 - 12 - 1931.

For Collector.

10.12.31

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Second Appeal No. /1931.

Between

Before the Munsif's
High Court Dt.Court Court.

The Secretary of State for India in Council, represented by the Collector of South Kanara.) Appellant Respondent Deft

and

Dewan Bahadur Alex Pinto..... Respondent Appellant Plainti

On appeal from the decree of the Court of the District Judge of South Kanara, dated 21-9-1931 in A.S.150 of 1927 preferred against the decree of the District Munsif of Mangalore dated 11-12-1926 in O.S.242 of 1925.

Appeal under section 100 and Order XLII of C.P.C.

Being aggrieved by the decree of the District Judge of South Kanara, the appellant abovenamed begs to prefer this appeal, on the following grounds:-

1. The decesion of the lower court is contrary to law.

2. Lower Court is wrong in holding that the suit is not barred by limitation and the reasons given by the lower court in that behalf are not cogent and sound.

3. The plaint plot having been entered as Government Poramboke, during the last survey and settlement operations, and the plaintiff's holding issued at the settlement not having included the plaint plot, the plaintiff's suit is clearly barred by limitation, and the non inclusion of the plaint plot in the plaintiff's holding, must be deemed to be an attack on plaintiff's title, so as to give him a cause of action, and the suit brought more than 6 years after the settlement is barred by limitation.

4. The Lower Court is wrong in thinking, that the demarcation of plaint plot, as a Poramboke, to be binding on the plaintiff, must have been done after notice to the Plaintiff and the Lower Court's judgment is vitiated by the efroneous view of the law that is applicable to the

facts of the case.

5. Lower Court's decision on the first issue is erroneous and based upon a misconception of law, arising in the case.

6. Lower Court has not correctly appreciated the various questions of law arising in the case and has not properly applied the law governing those matters.

7. The Lower Court having rightly agreed with the learned District Munsif in holding, on the 1st issue, that the plaintiff has failed to establish his warg right to the plaint plot, ought to have dismissed the suit, as a necessary result of the said finding, and was not justified in entering into a discussion on the question of acquisition of title by adverse possession a case not specifically put forward in the plaint, and on the strength of which no relief was prayed for in the plaint, which confines itself to one of title by warg right only.

8. Even assuming the Lower Court was justified in considering the question of title by adverse possession, the Lower Court has fallen into an error , in assuming, in favour of the plaintiff, possession for 60 years against the Government, on the ground that plaintiff has proved possession against Government, for 30 or 40 years. The rulings relied upon by the Lower Court, are not applicable to the present case.

9. Lower Court is wrong in applying the presumption of possession for the full statutory period, from evidence of possession of only 30 or 40 years.

10. Lower Court ought to have held that presumptions cannot be relied upon by a party seeking to establish the acquisition of title by adverse possession, and that possession for the full period of 60 years must be established.

11. Even according to the findings of the Lower Court, the plaintiff not having established adverse possession for 60 years, the suit ought to have been dismissed.

12. Lower Court has fallen into an error in holding that the classification and the inclusion of the plaint plot, in

defendent's title to the suit plot. Lower Court's decision on the legal effect of the entry of the plaint plot, as included in channel Poromboke, is erroneous.

13. The views expressed by the Lower Court in para 19 of the judgment, on the 1st issue are not correct and the Lower Court ought to have held that plaintiff has not relied on the acquisition of title by adverse possession, and ought to have found the same against plaintiff. The Lower Court appears to have lost sight of the observation of the trial court, in para 22 of the (Munsif's)judgment that "He (plaintiff) has not proved title and he has not attempted to prove possession for full 60 years adversely to the Government".

14. Lower Court ought to have held that plaintiff is not entitled to mesne profits or damages or to any of the reliefs claimed.

Prays therefore that this court may in reversal of Lower Court's decree, be pleased to allow this appeal, with costs throughtout.

Memo of valuations.

i) Declaration and possession of the plaint property valued as in the Lower Court at	Rs. 300-0-0
ii) Damages decreed by the Lower Court.	Rs. 80-0-0
iii) Past mesne profits decreed by the Lower Court.	Rs. 78-1-1
iv) Mesne profits from 21-9-1931 (date of decree) till this date at Rs.10/- per year.	
v) Interest on Rs.80/- from 20-1-1925 till this date at 6% per year.	
vi) Interest on Rs.66-10-8 from 21-9-1931 till this date at 6% per year.	
Total	Rs.

Dated

(True Copy)

Mangalore, 10th November 1931 /

From

The Government Pleader,
Mangalore.

To

The Collector,
South Kanara.

Sir,

Ref:-Suits-Dt.Court A.S.150/27.

Your Ref.A.3-No.5822/25, dated 9-9-31.

41-9(E)

I am of opinion that the decesion in the above appeal, is open to serious attack, and that very important questions of law arising in the case, have been wrongly decided by the learned District Judge, and, that a second appeal could be filed with a fair chance of success.

The learned District Judge, has held, agreeing with the District Munsif, that the plaintiff has failed to establish his warg right, to the plaint plot, but has held that the plaintiff has acquired title by adverse possession of 60 years. But, in ariving at this conclusion, the learned District Judge, holds that plaintiff has proved possession only for 30 or 40 years, and from this he presumes possession in plaintiff's favour and adversly against Government for 60 years.

In my opinion, the learned District Judge was wrong in applying presumption in a case of this sort, as the weight of authorities is in favour of the view, that as against Government adverse possession for the full period of 60 years must be proved, and that it is not open, to invoke the aid of presumptions, to fill in the place of actual proof.

Further, the prayer in the plaint, and the observation of the Dt.Munsif in para 22 of his judgment and the wording of the 1st issue all go to indicate that, plaintiff, has relied upon his warg right solely and not on acquisition of title by adverse possession. In this connection the observation of the District Munsif in para

22 of this judgment are very significant, and the District Judge was not right in entering into a discussion, on the question of adverse possession and finding it in plaintiff's favour. The wording of the 1st issue in the case is also very significant and indicates the same. Such being the case, the plaintiff's suit ought to have been dismissed, as a result of the clear finding on the 1st issue that plaintiff has failed to establish his warg right to the plaint plot and there was no scope for further discussion, on the question of adverse possesssion even though there is some reference to it in the pleadings.

I am therefore of opinion, that this is a fit case for second appeal and would recommend that a second appeal be filed, in view also of the fact, that heavy costs are made payable by the Government under the decree. There is appeal time till 1st February 1932.

Your obedient servant,
Sd/- X X
Government Pleader.

(True Copy.)

R. F. XXII-A-19—80,004—2-2-31.(6)

FOR MEMBER.

Subject.

Secy to G. Kanara, ~~Dt. Court~~ Dt. court
~~appeal~~ S.J. 150/27 - Grants - adverse dec.
II appeal - Sanctd -

READ AGAIN B. P. No. _____ ,dated _____ 193

" " " _____ " _____ 193

READ ALSO :—

Register No. _____ From the A 35046/31, No. Secl, dated ~~Appl. Dept~~ 193 H
Secl G
Secl M.

" [illegible] " ~~Legal opinion regd by I.G.~~ 193

" " " " " " 193

RESOLUTION. (H.S.) No. 107, dated 11. 1 - 1932.

A copy of the letter received from the Collr of S. Kanara ~~Re~~ with its enclosures is are forwarded to the G.O. Madras & is requested to revise, if necessary, the draft memo appeal and file, obtain leave to appeal in the High Court against the decree in AS No 150/27 on the file of the DC judge, S. Kanara. He is requested also to file a petition for stay as regards the payment of the decree amount.

2/ He is requested to address the

CoM directed for accn with the records or information required by the attention of the CoM is ~~is this connection directed~~ to para 35 B.J.O. 95.

Chn.

19/3/32

7a-4-32

18/

11.32

'as per list of Collectors appt of Labour

The Colly S. Kanara ✓

13

A158

Ref. A3-5822-25.

South Kanara Collector's Office,
Mangalore, 10th January 1932.

From

Khan Bahadur J. Hussain, Bar-at-Law,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Suits - (South Kanara) - Mangalore - District Munsif's Court - O.S.242/25 (District Court A.S.150/27 and Sub Court A.S.127/29) - Second appeal to High Court.

Please see my letter Ref.A3 No.5822-25 dated 9th December 1931. The time allowed by the District Court for the payment by Government of the decree amount expired on 21.12.1931. The appeal time will expire on 1.2.1932. I therefore request that early orders may be passed on my reference.

pp 1-2(S)

For Collector.

12.1.32

To Ag (CR)
Orders on the COMio letter have already issued - vide pp 11-12 (S)
This may be filed with B.C. in 107
(S) d 11.1.32

19-1-32

1.5 A344

S.F. 92

In reply, please quote number, date and short title

BOARD OF REVENUE DEPARTMENT.

Received 28 JAN 1932 Registered

From (Name) M.R.Ry. ,P.Venkataramana Rao Avl.,

(Designation) Government Pleader, Madras.

Post Box (Station)

Telegraphic Address

To The Secretary to the Board of Revenue,

Land Revenue & Settlement, Madras.

No. 106, *dated* 27th Jan., 1932.

Sir,

Enclosures

Spare Copies

Suits - (South Kanara) - District Court - A.S. No.150/27 - Encroachment - adverse decision - second appeal filed - intimated.

Appln.12(C)

With reference to B.P.Misc.No.107, dated the 11th instant, I have the honour to inform the Board that I have this day preferred a second appeal against A.S.No.150/27 on the file of the District Court, South Kanara, together with a petition for stay.

I have the honour to be,

Sir,

Your most obedient servant,

P Venkatarao

Government Pleader.

A.J.(LR)

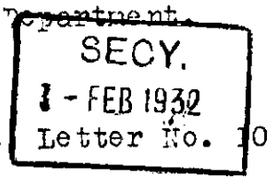
may be filed with B.P. no 107

(C). d 4.2.32

29/1/32

T 17 A435

Revenue Department.



From the Government Pleader, Madras Letter No. 105 dated the 27th January 1932.

Suits - (South Kanara) - District Court - A.S.No.150/27 - Encroachment - adverse decision - second appeal filed - intimated.

With reference to G.O.Mis. No.1315, Revenue, dated the 29th August 1923, I have the honour to report as follows:-

The plaintiff sued in C.S.No.242 of 1925, District Munsiff's Court, Mangalore, the Secretary of State for India in Council represented by the Collector of South Kanara, for a declaration that S.No. 5/7E of Thannirbhavi village belonged to him on warg right, for recovery of possession of it, for recovery of Rs. 250/- value of trees cut from the land, for a direction to the defendant (Government) to restore the plot to its former state and for recovery of Rs.6/- being past mesne profits and future mesne profits at Rs.15/- per year. The District Munsiff of Mangalore who heard this suit dismissed it with costs to Defendant (Government). Thereupon, the plaintiff preferred an appeal A.S.No.150/27 in the District Court of South Kanara where it was allowed. As against this decision of the District Judge ~~Judge~~, South Kanara, I have this day preferred a second appeal in the High Court under instructions from the Board of Revenue, Land Revenue and Settlement, conveyed to me in B.P.Misc. No.107, dated the 11th January 1932.

Endorsement No. 295.F/32-1 dated 1st February 1932.

Communicated to the Board of Revenue.

T.N.S. Raghavan.
Under Secretary to Govt.

To the Board of Revenue (L.R. & S).

F o r w a r d e d.
(By Order)

A.O (L.R.)
may be filed with B.P. no 107
11.1.32

V. Narasimhachary

Superintendent.

IV-re file

Appeal time expires on 1-2-32

Smith- (Garth Kanara) - Dt Court- AS no 150/27- Tanmir bhavi Village - Encroachment - Channel for ambroke- Second Appeal- Orders.

A 3504/31

(LR) through C

To HS

Please see the Collector's letter at pp 1-2 of.

The facts of the Case are at pp 1-3 (Q)

The question for consideration is whether a second appeal should be filed in the High Court against the judgment of the Dt Court

pp 1-10 (E)

Reference is invited to the Local Govt's opinion at pp 9-10 of. He thinks that a second appeal can be successfully preferred to the High Court and the Collector agrees with him.

p 1 of

The decision of the Dt Court appears to be wrong - for various reasons

The Dt Judge ~~arbitrarily~~ rejected the evidence of the Govt witnesses as unreliable, and the reasons adduced by him are not convincing. The Karnam, the Rev Inspector, and the Taluk Tahsildar are the ~~local~~ Govt officers on the spot, who inspected and took the encroachment. Their evidence should have been taken as ~~authoritative~~ entitled to some weight. Instead it was brushed aside, and the Tahsildar was taken to task for booking the encroachment.

pp 5-7 (E), paras 13-

p 6 (E) the Tahs. as the Dt J. did

The Dt Judge believed in the evidence let in by the plaintiff, though some of them were ~~known plaintiffs~~ closely related to each other. The judgment is therefore unreasoned and ~~unreasonable~~.

A.M.

pp 4-5 (E) paras 11+12

The Dt Judge rejected also the documentary evidence produced by the Govt. That the private was classed as a Channel poramboke at the time of the ~~old~~ 1st survey and settlement is really a point in favour of

p 7 (E) para 16

the Govt But the Dt. Judge held that the classification of the suit site as a Channel Pramboke might see an error made during the old Survey and settlement and has no higher legal effect than a mere assertion of title and is insufficient to prove title.

In 9(E) para 18 what about the S. & Boundy. Act?

The Dt. Judge's opinion that the plaintiff has proved adverse possession as against the Govt is based on a mere presumption and not founded on facts. To presume that the plaintiff has proved adverse possession against the Govt for over sixty years merely because he proved possession for 30 to 40 years is unwarranted ~~as it is unjust~~.

In 8-9(E) para 17-20.

As already pointed out the judgment seems to be ~~hopelessly~~ one sided. The Dt Judge has admitted the plaintiff's title to the suit property, awarded him Costs

In 9(E) para 22

and also damaged as against the Govt The amount involved is also large .. Rs 655-12-3 p3cf

.. It is submitted that the Board may agree .. to the local Govt and the Collector and sanction the filing of the second appeal

17/8 .. It does not appear that Govt have a strong case for appealing. The extent of the land involved is about 7 Cents. Govt counsel para 6 p 2 g(E)
not seriously deny that the old survey and settlement of the district was full of material errors. The Dt Manager also says that the survey was done very carelessly on both sides para 21. p 57 g(E)
in the survey and settlement. The oral evidence was conflicting according to the Dt Munsiff's view. The Dt Judge has found that the evidence for Govt is shabby para 13 p 5 g(E)
in the extreme. There was no complaint to the authorities about the obliteration of the pathway in question though the fishermen complained when Gangayya Pujari prevented them from using the same immediately para 14 p 6 g
to the west of the bund. It does not therefore appear that Govt can take much on their title based upon user. The Dt Judge has also observed that the Tasildar admitted para 16 p 7 g(E)
that survey errors were committed with reference to the suit lands themselves

The local CPS opinion is for denial. He considers p 9-10 g

that the D & C was wrong in discussing the question
p10 of. of adverse possession and finding in the plaintiff's
favour. The plaintiff relied on adverse possession
p6 of(Q) also. Please see para 3 of the plaint.

This is doubtful if there is a case for delay. The
p2 of. amount of costs may be ordered to be deposited in the
Court, bearing interest, pending final orders.

It seems proper to consult the G.P. Madras. on the
question of appealing to the High Court. This is a decreed
Appeal and this on a question of law only.

ltr 12.3

If the Board decides on the immediate
payment of the decree amount to the
plaintiff then the additional allotment
of Rs has applied for may be sanctioned
to the collr. the expenditure is
debitable to "collrs and magistrates
Contingencies and Supplies and
Local Charges". The collr. may be
asked to incur the expenditure
provisionally & Report on

The G.G, Madras may be
consulted regarding the proposed
appeal.

Cf.
2.12.31
22.12.31

5

22.12.31.

A.W
22.12.31

BDs W.O. ref A-3504/31-1 dt 22-12-31.

~~Forwarded to the G.P. Madras~~

for favour of opinion as to whether before 15-1-1932
early date. work may be carried out

Engineer-in-Chief

by 22/12

23/12/31

To the Govt. Madras
with:
(1) Cinerypic 6 pages
(2) Naepile 6 pages
(3) Printed copies of judgements of the Appellate Court and the lower Court, with plan, dispositions of decided etc — 139 pp
(one file)
(4) Mis 2070
22-9-25

23/12

Opinion No. 1.

Suits - (South Kanara) District Court - A.S.No.150/27 - Encroachment - Channel poramboke - Second Appeal - opinion submitted.

Ref: Board's U.O.Ref:A.3504/31-1, dated 22-12-1931.

RECEIVED
- 4 JAN 1932
LAW DEPARTMENT

Both courts have concurrently found against the plaintiff on the question of title. But the learned District Judge decrees plaintiff's suit because "he (Plaintiff) has proved possession for 30 to 40 years and we can presume on the facts and circumstances of this case that it was for the full statutory period of 60 years" This he was not entitled to do according to the Privy Council ruling in 39 Madras 617. The soundnes of the decision relied on by him (33 M 173 and 362) is open to question after the said Privy Council case.

As a question of law thus arises in the case, I am of opinion that a second appeal may be filed.

Madras, 2nd Jan.,1932.

P Venkatarama Rao
Government Pleader.

Register U.O. No. 3504/31-1 dated 6-1-32

EO's Rep 7015

The filing of a Second appeal may be sanctioned. A petition for stay as regards the payment of the decree amount may also be [illegible]

7-1-32 p2 cf

7.1.32.

8-JAN 1932

10 HQ(R.)

notes already

Draft submitted

(

3/10/43

w/
7/11-43